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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: SRC 02 205 53316

Office: TEXAS SERVICE CENTER

Date:

JUN 17 2004

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

PETITION:

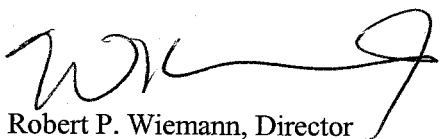
Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

6

DISCUSSION: The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner claims to be a restaurant. It seeks to employ the beneficiary temporarily in the United States as its general manager. The director determined that the petitioner had failed to establish that a qualifying relationship existed between the U.S. and foreign entities.

On appeal, counsel contends that a qualifying relationship does exist between the U.S. and foreign entities.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

The regulations at 8 C.F.R. § 214.2(l)(3) state that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

According to the evidence contained in the record, the petitioner claims to be in the restaurant business. The petitioner claims to be a subsidiary of Tacos Del Julio, located in Mexico. The petitioner was established in 2001. The petitioner seeks the beneficiary's services as general manager for a period of three years, at a yearly salary of \$40,000.00.

At issue in this proceeding is whether a qualifying relationship exists between the U.S. and foreign entities.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) state:

Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

In pertinent part, the regulations define "parent," "branch," "subsidiary," and "affiliate" as:

Parent means a firm, corporation, or other legal entity which has subsidiaries.

* * *

Branch means an operation division or office of the same organization housed in a different location.

* * *

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

* * *

Affiliate means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

8 C.F.R. §§ 214.2(l)(1)(ii)(I), (J), (K), and (L).

In the instant matter, the petitioner claims to be a subsidiary of the foreign entity. In response to the director's request for evidence regarding the existence of a qualifying relationship between the U.S. and foreign entity, the foreign entity representative explained that the foreign entity provides the recipes and the ingredients to the U.S. entity. The representative further stated that the foreign entity supervises the quality of the foods prepared by the U.S. entity to assure that the same taste is shared by both entities.

The petitioner provided a translated copy of an Operations Contract entered into by the foreign and U.S. entities. The contract stipulated the responsibilities and conditions of the companies. The petitioner also submitted a copy of the Certificate of Registration for the restaurant trademark, Texas Sales and Use Tax Permit, copies of wire transfers payable to the beneficiary, transfer invoices, photographs, and cross directorship including documents pertaining to the entities web site.

The director denied the petition after determining that the record did not establish that a qualifying relationship exists between the U.S. and foreign entities. The director stated that the petitioner had not submitted evidence of a qualifying relationship. The director also stated that there appeared to be evidence of some kind of contractual relationship between the U.S. and foreign entities, but that it did not qualify for L1 consideration.

On appeal, counsel disagrees with the director's decision and submits a brief and additional evidence in support of his contention that a qualifying relationship does exist between the U.S. and foreign entities. Counsel states that the evidence submitted was sufficient to establish a parent subsidiary relationship. Counsel further contends that documents submitted, including the letter of explanation, Operations Contract, Texas Sales and Use Tax Permit, and the Patent and Trademark Office Certificate of Registration establish ownership and control over the U.S. entity by the foreign entity. Counsel asserts that other independent evidence submitted, including same name registration, cross directorship, sharing of technical, financial and research assistance demonstrates the existence of a qualifying relationship. Counsel also asserts that the employment relationship that exists between the U.S. and foreign entities is further evidence of a qualifying relationship between the two entities. Counsel resubmits business documents on appeal.

Counsel's assertions are not persuasive. The purpose of the L-1 visa category is to facilitate key personnel between companies in the United States and their associated firms abroad. All L-1 Intracompany Transferee petitioners must initially establish that a qualifying relationship exist between the U.S. and foreign entities. In that respect, new offices are held to the same basic standards of proof of ownership and control as business organizations that have been in operation for more than one year. See Section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L); 8 C.F.R. § 214.2(l)(1)(ii); 8 C.F.R. § 214.2(l)(3)(i); and 8 C.F.R. § 214.2(l)(1)(ii)(G). There must be a showing of commonality in the ownership and control of the U.S. and foreign entities.

The petitioner has not submitted sufficient evidence to establish that a qualifying relationship exists between the U.S. and foreign entities. The regulations and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between U.S. and foreign entities for purposes of a nonimmigrant visa petition. *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm. 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988) (in immigrant visa proceedings). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International, supra*. In the instant matter, the petitioner has not submitted sufficient proof of stock purchase by the foreign entity. There has been no Articles of Incorporation, company By-Laws, tax records, stock certificates, stock certificate registry, purchase of shares agreements, bank statements, cancelled checks or any other business documents presented to substantiate purchase of U.S. entity stock by the foreign entity. There are no certified meeting minutes that demonstrate the foreign entity's interest in purchasing shares of stock in the U.S. entity, nor has there been evidence presented to show an agreement by the directors and shareholders of the foreign entity to purchase such stock. Neither does the record establish that the control of the entity is *de jure* or *de facto*, or to what extent proxy votes are utilized. *Matter of Hughes*, 18 I&N Dec. 289 (BIA 1982).

The evidence submitted by the petitioner did not address the question of whether the U.S. and foreign entities present a subsidiary relationship. Specifically, the petitioner submitted copies of an Operations Contract, Texas Sales and Use Tax Permit, Certificate of Registration for the restaurant trademark, cross directorship

documents, copies of wire transfers, transfer invoices, and photographs. However, the petitioner did not provide a plausible explanation for how this evidence established a qualifying relationship between the U.S. and foreign entities pursuant to the regulations. See 8 C.F.R. § 214.2(l)(1)(ii)(G) and (K). It appears from the record that the two entities have established a cooperative arrangement that does not rise to the level of a qualifying relationship as defined by the regulations. There has been no evidence presented to establish who controls company policies and procedures, production, customer service, and advertising with regard to the U.S. entity's operations. Likewise, evidence of record fails to show who owns stock in the U.S. entity. Providing recipes and ingredients and supervising the quality of food prepared is not adequate proof of ownership and control to overcome the objections of the director. Claims of ownership and control without independent documentary evidence to substantiate such an allegation is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Likewise, the petitioner has failed to establish that there is an affiliate relationship between the U.S. and foreign entities as the record does not show that both entities are owned and controlled by the same group of individuals, each owning and controlling approximately the same share or proportion of each entity.

Upon review of the entire record, the petitioner has not established that a parent-subsidary relationship exists between the U.S. and foreign entities. Therefore, the appeal will be dismissed.

Beyond the decision of the director, the record is not persuasive in demonstrating that the beneficiary has been or will be employed in a managerial or executive capacity as defined at section 101(a)(44) of the Act. In addition, there is no evidence to show that the petitioner has secured sufficient physical premises to house the new office or is doing business pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(H). Furthermore, there is no evidence of the size of the United States investment or the financial ability of the foreign entity to remunerate the beneficiary for his services. As the appeal will be dismissed on other grounds, these issues need not be examined further.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.